

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA)
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)
 v.) No. 1:03-cr-081-001
) Judge Edgar
)
)
 SAMUEL BRINSON)

MEMORANDUM AND ORDER

Defendant Brinson moves [Court Doc. 46] “for an evidentiary hearing and an order permitting the Defendant to withdraw his guilty plea and to set this matter for trial on the merits.” Defendant has also moved [Court Doc. 47] to “cancel” the re-sentencing of defendant presently scheduled on Tuesday May 2, 2006. Both of these motions are **DENIED**.

This case is back before this court only for re-sentencing pursuant to the directive of the Sixth Circuit Court of Appeals engendered by the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005). The Court of Appeals has affirmed the defendant's conviction. It is obviously not now within the province of this court to permit the defendant to withdraw his guilty plea for any reason.

Defendant seeks (for the second time) to continue his re-sentencing, now scheduled for May 2, 2006. Counsel states that he "has learned that the Defendant may have an

extensive history of mental illness" which could have an impact upon his sentencing. The court would point out to counsel that the defendant was thoroughly examined by the Bureau of Prisons prior to his original sentencing in this Court. Competent psychiatric personnel concluded that the defendant was indeed competent to stand trial, and that he was likewise competent at the time of his offenses. Defendant did not contest this determination. This court, upon sentencing the defendant, was well aware of defendant's mental status, and recommended in the judgment that "he undergo a Mental Health Assessment and/or participate in a Mental health Treatment program while incarcerated." Moreover, this court considered the 18 U.S.C. §3553(a) factors when defendant was originally sentenced. There is not a need at this time for this court to have any more mental health information on the defendant, and likewise there is no need to postpone the re-sentencing.

SO ORDERED.

ENTER this *12th day of April, 2006.*

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE